

"Wolfson, Paulette - LGL" <Paulette.Wolfson@cityofhouston.net>

09/08/2005 10:21 AM To

Group A-AND-R-DOCKET@EPA

cc

"Marks, Elena - MYR" <Elena.Marks@cityofhouston.net>, "Stein, Marty - MYR"

<Marty.Stein@cityofhouston.net>, "Michel, Frank - MYR"

<Frank.Michel@cityofhouston.net>

bcc

Subject

attention Docket ID NO. OAR-2004-0094

Comments on the Proposed Changes to the National Emission Standards for Hazardous Air Pollutants (NESHAPS) Eliminating the Requirement to Implement Plans to Minimize Emissions of Hazardous Air Pollutants (HAPS) during Episodes of Startup, Shutdown and Malfunction and Limiting the Availability of the Plans to the Public

To whom it may concern:

Attached please find the comments of Mayor Bill White, of the City of Houston, regarding the above noted proposed rule change.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Paulette Wolfson

Paulette Wolfson  
Special Counsel-Air  
Office of the City Attorney  
City of Houston  
900 Bagby, Suite 300  
Houston, TX 77002

Direct line (713) 437-6708  
Fax (713) 247-1017  
Paulette.Wolfson@cityofhouston.net



# CITY OF HOUSTON

Office of the Mayor

**Bill White**

Mayor

P.O. Box 1562  
Houston, Texas 77251-1562  
901 Bagby, 3rd Floor  
Houston, Texas 77002

T. 713.247.2200  
F. 713.247.1067  
[www.cityofhouston.gov](http://www.cityofhouston.gov)

September 6, 2005

U.S. Environmental Protection Agency, EPA  
West, (Air Docket)  
1200 Pennsylvania Av., NW  
Room, B108  
Mail Code 6102T  
Washington, DC, 20460

Attention e-docket ID no. OAR-2004-0094

Re: Comments, National Emission Standards for Hazardous Air Pollutants (NESHAPs), Proposed Rule Changes Eliminating the Requirement to Implement SSM Plans and Limiting the Availability to the Public of Plans for Minimizing Emissions During Episodes of Startup, Shutdown and Malfunction (SSM), 40 CFR Part 63, et. seq.

Docket ID No. OAR-2004-0094

Dear Administrator Johnson:

I appreciate the opportunity to comment on the above noted proposed changes to regulatory requirements affecting operations when there may be releases of hazardous air pollutants. As the mayor of the city near the greatest concentration of companies in the refining and petrochemical industries in the country, I am deeply concerned that these changes would undermine the fundamental purpose of the NESHAPs regulations. These regulations seek to minimize the emissions of hazardous air pollutants in general and the particular section of the regulations that EPA is proposing to modify addresses controlling emissions during the most difficult times of plant operations; startups, shutdowns, and malfunctions (SSM), the times when most accidents happen. It is, therefore, important that companies plan for these episodes; that the companies are held responsible for their plans, and that the public can easily obtain these SSM plans.

Basically, the proposed rule changes would eliminate the requirement that companies implement the SSM plan they had already developed and that companies would no longer routinely submit the SSM plans to EPA. EPA would also place additional road blocks in the path of the public when the public wants to obtain a copy of the SSM Plan. The rules would still require companies to develop plans for minimizing emissions of hazardous air pollutants, such as butadiene and benzene to name two, during periods of SSM, but the companies would no longer have to *implement the plans*. This makes no sense for a whole host of reasons.

Obviously the purpose of the SSM plans is to insure that the companies have, in advance of a high-risk procedure with hazardous chemicals, the necessary equipment and trained employees to deal with the potential for emissions of hazardous pollutants. This is very similar in philosophy

to OSHA's Process Safety Management rules; having a plan minimizes surprises, insures the safety of workers and the public. I would assume that companies would even conduct drills using the SSM plan so that instead of waiting for an emergency situation like a malfunction or an extraordinary situation such as a startup or shutdown, the companies would be prepared in advance. Based on what's learned during the drill, or plant environmental and safety meetings or via discussions in trade groups, like API, where technical standards are established, the procedures in the SSM plan could be refined. So clearly, from the perspective of dealing with these high-risk situations, having an SSM plan and implementing *it* are integral and important parts of the rules to manage effectively and to minimize the emissions of the most toxic air pollutants.

In addition, from the perspective of a city with a regulatory group charged with maintaining the quality of the air in Houston, I also find it hard to understand why companies would not have to submit the SSM plan to EPA or a delegated state agency, except in certain limited circumstances, and then, upon request. To do an effective inspection of a facility, the inspectors need the information regarding the SSM plans ahead of time, they need to know what they are looking for. Is backup equipment to deal with a malfunction in place? Is there an auxiliary flare? Can the inspector make suggestions about a more effective plan if the inspector has not had a chance to review it? So, it just makes no sense that companies will not be providing the SSM plans to EPA until there has already been a problem and EPA requests the SSM Plan. The requirements to have an SSM plan to submit the SSM plan to EPA and to implement the SSM plan should prevent *excess emissions*. EPA's rationale for the change in requiring companies to implement the SSM plan, the company's own plan, seems to be that in the heat of the moment, during a startup, shutdown or malfunction, the plan doesn't work and folks vary from the plan. Then the company is held to be in violation of its own SSM plan. But EPA's solution to this potential problem, eliminating the requirement of implementing the SSM plan, is the wrong one. The better solution, if EPA is concerned that the plans become out of date or need revision, is to require revisions to the plans if changes are made, not to just eliminate the requirement to implement SSM plans. In addition, if there is an SSM incident and the submitted SSM plan is not followed in every detail, the companies should have an affirmative defense to enforcement if the company merely explains the reasons for the change and updates the SSM plan.

There are other benefits to having a requirement to implement the SSM plans. It would seem to me that having a plan and being held to it is a useful way of determining compliance with the general duty to minimize emissions during these times. By submitting and implementing the SSM plans, the companies benefit from the certainty of knowing what they should do in an SSM situation, and the companies should be allowed, in the appropriate circumstances, to explain why they varied from the submitted SSM plan. The regulatory agencies benefit from the requirement to implement the SSM plans because inspectors will know what they are looking for when they visit a plant. Therefore, the benefits of having an SSM plan and requiring the companies to actually implement the SSM plan, a plan it seems to me the companies should already have in their SOP's, far out weigh any perceived potential for lack of flexibility in actual implementation of the SSM plan.

EPA's proposed changes to the rules also would effectively cut off the public's access to the companies' SSM plans. EPA's proposal to limit public access would severely reduce the value of the SSM plans, which are required to be developed by companies to minimize emissions in what can be emergency situations involving hazardous chemicals. EPA is now stating that, although the plans are to be developed by the companies, the companies would not need to provide them to the public, or even to provide them to EPA, unless EPA specifically requests the SSM plans. To support its position, EPA stated that providing the SSM plans could be burdensome on the

companies and that the SSM plans might contain confidential business information (CBI). EPA has adopted a hammer when a less severe remedy is required. As noted above, providing the plans to EPA ahead of time is advantageous to efficiently conducting inspections, among other things.

Greater public access to information provides other advantages as well. For example, EPA noted that companies developing SSM Plans will benefit from the Flint Hills Resources project for reducing emissions during SSM, because the project will result in "explicit operational expectations and define(s) good engineering practices and good air pollution control practices". That's a great project, but it only involves one company. It seems to me that sharing the SSM plans from all the companies will result in better SSM plans because effective methods for managing emissions in these situations could gain wider dissemination.

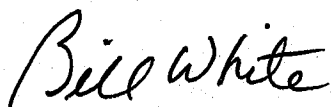
If there are concerns about confidential business information, or CBI, companies often submit sanitized plans to EPA, that is a version of the document with CBI deleted, so that important information can be made available to the public without compromising the company's legitimate business interests.

EPA also states "many sources (companies) will be responsive to direct community requests (for SSM Plans) without any governmental involvement at all." Unfortunately, if there is no regulatory mandate to make the plans available to the public, many companies will not voluntarily comply with the request for the SSM Plan. This will mean that there will be unnecessary delays for the public to obtain the information, which is important to their health, welfare and safety.

Therefore, the EPA should not promulgate the proposed changes to the NESHAPS' rules, which would diminish the value of the SSM Plans. The proposed changes would also cause uncertainty in the regulated community about the standard to be imposed to determine what is compliance with the general duty to minimize emissions of hazardous pollutants during startup, shut down and malfunction episodes. In addition, to make the SSM plans really effective, the SSM plans should be provided to EPA and updated when changed. Companies should have drills and employees should be trained in SSM Plan implementation; in an emergency, it's often too late. Making the SSM plans available to the public will reassure the public that companies have adequate plans for dealing with these potentially risky situations.

Thank you for the opportunity to comment on the proposed changes to the NESHAPs rules.

Sincerely,

A handwritten signature in cursive script that reads "Bill White".

Bill White  
Mayor

BW/EMM/ddw